

Gilhooly



**Comptroller General  
of the United States**

**Washington, D.C. 20548**

# **Decision**

**Matter of:** D.M. Wilson Lumber, Inc.--Request for  
Reconsideration

**File:** B-239136.2

**Date:** May 18, 1990

D.M. Wilson, for the protester.  
Kathleen A. Gilhooly, Esq., and Andrew T. Pogany, Esq.,  
Office of the General Counsel, GAO, participated in the  
preparation of the decision.

## **DIGEST**

Request for reconsideration of dismissal of protest  
challenging acceptability of competitor's bid is denied  
where the competitor's failure to complete representation  
concerning its number of employees did not eliminate or  
reduce its obligation to perform services in conformity with  
all material terms and conditions of the solicitation.

## **DECISION**

D.M. Wilson Lumber, Inc., requests reconsideration of our  
decision, D.M. Wilson Lumber, Inc., B-239136, Apr. 12, 1990,  
90-1 CPD ¶     , dismissing its protest against the  
acceptability of a competitor's bid under the Upper  
Switchback Timber Sale offered by the Shoshone National  
Forest.

We deny the request for reconsideration.

In its original protest, Wilson alleged that the Forest  
Service improperly allowed a competitor to furnish required  
information concerning the number of its present employees  
after bid opening. We dismissed the protest because the  
information did not relate to the bidder's performance  
obligation and therefore could be furnished at any time  
prior to award.

In its reconsideration request, Wilson states that it was  
required to provide the "number of employees" information in  
the bid package, and argues that the competitor's infor-  
mation should have been submitted before bid opening,  
because it relates to the "bidder's performance obligation,

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responsibility and ability to complete the project in a satisfactory manner." Wilson notes that a logging or timbering operation cannot function with one cutter providing every service required.

It is apparent that the protester fails to recognize the distinction, as explained in our prior decision, between the responsiveness of a bid and the bidder's responsibility. A responsive bid is one that, if accepted by the government as submitted, will obligate the contractor to perform the exact thing called for in the solicitation. See Propper Mfg. Co., Inc., et al., B-233321, B-233321.2, Jan. 23, 1989, 89-1 CPD ¶ 58. Responsibility, on the other hand, refers to a bidder's capacity to perform all contract requirements, and is determined not at bid opening, but at any time prior to award based on any information received by the agency up to that time. KASDT Corp., B-235889, July 19, 1989, 89-2 CPD ¶ 63. Wilson's reference to a timbering operation's inability to function with one cutter providing every service concerns the operation's capacity to perform contract requirements, that is, its responsibility.

A bidder's failure to complete certifications and representations that have no bearing on whether the bid constitutes an unequivocal offer to provide the product or service does not affect the bid's responsiveness. R&R Roofing and Sheet Metal, Inc., B-220424, Nov. 21, 1985, 85-2 CPD ¶ 587. Here, the competitor's failure to complete a representation concerning the number of employees did not eliminate or reduce its obligation to perform services in conformity with all material terms and conditions of the solicitation, and thus did not render its bid nonresponsive.<sup>1/</sup> See Gracon Corp., B-234344, July 7, 1986, 86-2 CPD ¶ 41.

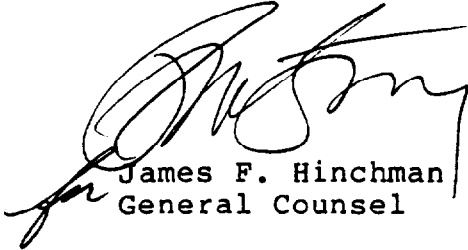
To the extent that Wilson is arguing that the IFB's language required each bidder to submit the employee information with its bid, making the requirement a matter of responsiveness, the protest also is without merit. A requirement which

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<sup>1/</sup> The information concerning the number of employees is used by the agency either in connection with small business set-asides (this sale was not a set-aside) or for internal agency purposes. The information is not related to any performance obligation.

relates to responsibility cannot be converted into a matter of responsiveness merely by the terms of the solicitation. Sage Assocs. Gen. Contractors, Inc., B-235497, Aug. 15, 1989, 89-2 CPD ¶ 141. Since the requested information relates to responsibility, the competitor's failure to submit the information with its bid had no bearing on the responsiveness of the bid, regardless of the language in the solicitation.

The request for reconsideration is denied.



James F. Hinchman  
General Counsel